

ROBERT K. CAMBRIDGE

IBLA 82-992

Decided April 12, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, M 51364.

Affirmed.

1. Notice: Generally--Oil and Gas Leases: Rentals--Rules of  
Generally

Practice:

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

APPEARANCES: Robert K. Cambridge, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert K. Cambridge has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application, M 51364, which received first priority for parcel MT 18 at the May 1981 simultaneous lease drawing.

On March 23, 1982, BLM sent to appellant by certified mail a notice advising him to sign the enclosed lease forms and return them with the accompanying stipulations and first year's rental of \$40 within 30 days of receipt

of the notice. The notice was returned to BLM by the Postal Service marked "Unclaimed" on April 19, 1982.

BLM's decision rejects appellant's offer, in accordance with 43 CFR 3112.6-1(d), for failure to file the offer and rental as required by 43 CFR 3112.4-1. 1/ BLM also notes that 43 CFR 1810.2(b) states that a person will be deemed to have received the communication "if delivery is attempted to his address of record, regardless of whether it was in fact received by him." 2/

In his statement of reasons, appellant argues that he never received notification from the Post Office that a certified letter needed to be picked up and that BLM did not allow him 30 days to receive the notice and return the offer. 3/

[1] The Board has recently examined the effect of 43 CFR 1810.2(b) in circumstances similar to those presented here. In Michele Dawursk, 71 IBLA 343 (1983), we found that the regulatory language referring to mail that is "refused" has been interpreted to encompass mail that is undeliverable because it is "unclaimed" even where there is no evidence of fault on the part of the BLM client and therefore, absent a showing of negligence on the part of the Postal Service, as BLM's agent, mail that has been returned to BLM as "unclaimed" is considered to have been constructively served on the BLM client. Although this rule of constructive service may seem harsh in cases such as this one and Dawursk where the appellant claims that he never received any notice from the Postal Service, the Board has found the regulation to be reasonable and necessary to expeditious administration of BLM's business. Dawson v. Andrus, 612 F.2d 1280, 1283 (10th Cir., 1980); Charles M. Brady, 33 IBLA 375, 377-78 (1978), quoting Jack Koegel, 30 IBLA 143, 144 (1977); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975).

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1/ 43 CFR 3112.4-1 provides:

"§ 3112.4-1 The lease offer and payment of first year's rental.

"(a) The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. \* \* \* The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease."

2/ 43 CFR 1810.2(b) actually states that "a person will be deemed to have received the communication if it was delivered to his last address of record \* \* \* regardless of whether it was in fact received by him." It continues,

"An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by the post office authorities."

3/ Appellant counts from Mar. 23, 1982, the date of the notice, to Apr. 19, 1982, the date of its return to BLM. As we discuss, infra, the 30 days in this case began to run on Apr. 19, 1982, not Mar. 23, 1982.

Constructive service has been held to take effect at the time of return by the Postal Service of an undelivered certified letter to BLM. Betty Alexander, 53 IBLA 169 (1981); see also 43 CFR 4.401(c)(3). Since BLM received the unclaimed envelope back on April 19, 1982, appellant's submission was due on May 19, 1982. In the absence of a timely filing, BLM properly rejected appellant's simultaneous lease application. Michele Dawursk, *supra*; Paul H. Landis, 61 IBLA 244 (1982). BLM has no discretion to waive timely filing in the case of a simultaneous application because the rights of the second and third qualified applicants intervene. 43 CFR 1821.2-2(g).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Will A. Irwin

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Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

